(1) SUPREME COURT, U.S.
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IN THE

Supreme Court of the United States

October Term, 1999

Garrett Burkhart

v

Diana L. Quilici

On Petition For Writ Of Certiorari
To The California Supreme Court

PETITION FOR WRIT OF CERTIORARI

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18 pp

QUESTION PRESENTED

Whether there is closure in this family law case because there is: 1) no order stating "joint physical and joint legal custody of Garrett Roy Burkhart, Jr. and therefore a threat of move-away and confusion of odd/even years individual parties declare deductions; 2) no order addressing the community debt which Dr. Burkhart up to now has been the only party taxed with that burden; 3) no order dividing up the community's FERS Pension valued at $12,362.00 in 1996 violating California Family Code Section 2610 nor the Home Savings Bank Accounts and Home Savings C.D.'s Dr. Quilici made off with; and 4) no direct testimony of Dr. Burkhart at his own trial because the trial court judge, prejudicially erred going beyond his scope and alone called Dr. Burkhart to the stand as an adverse witness. As this case stands the question of closure may be overshadowed by the unconstitutional issues violating Dr. Burkhart's rights to a fair trial and depriving Dr. Burkhart of life, liberty, and property without due process of law under the Amendment V of The United States Constitution. And although not a criminal case, Dr. Burkhart believes that his right under Amendment VI was also prejudicially and willfully violated by the trial court.

What is more important than the best interest of the child, Garrett Roy Burkhart, Jr. to have closure and finish the trial or order a new trial? Why should lives be ruined as a result of a willfully negligent trial judge coupled with the intentionally non-disclosing, perjury ridden testimony of Dr. Quilici, who confessed to forgery? (Reporter's Transcripts 138.) Laws need to be changed! If Dr. Quilici decides to take on an alternate life style and wants a divorce, she has that right. But going from that to threatening to move their son out of the country and financially ruining the lives of Dr. Garrett Burkhart and Garrett Jr. is an abomination of the whole legal system. The legal system of this country should not add to the confusion as it did in this case. The legal system should not make the outcome of a divorce one of the leading reasons this country has why a person is forced into bankruptcy.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term 1999

Garrett Burkhart, Petitioner,

v.

Diana L. Quilici , Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

Dr. Garrett R. Burkhart, D.D.S. respectfully petitions for a writ of certiorari to review the judgment of the California Supreme Court from the California Court of Appeals from the California Sacramento Trial Court in this case.

OPINIONS BELOW

The opinion of the California Supreme Court (App., infra, a separate volume) is unreported. The opinion of the court of appeals (App., infra, a separate volume) is unreported. The opinions of the trial court (App., infra, a separate volume) are unreported. Please note Dr. Burkhart requests this Court to order the opinions including the Court of Appeals be reported.

JURISDICTION

The California Supreme Court entered its judgment on October 20, 1999 (App.,a separate volume). The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

STATUTORY PROVISION INVOLVED

The Fifth Amendment of The United States Constitution reads, "No person shall be ... deprived of ... liberty, or property without due process of law...."

"In all trials the testimony of witnesses shall be taken orally in open court...." Federal Rules Civ.Proc., rule 43, 28 U.S.C.)

And although not a criminal case, Dr. Burkhart would also like to raise the Sixth Amendment of the United States Constitution, the right to a fair trial and "... the right to be confronted with the witnesses against him; to have compulsory process for obtaining witness in his favor, and to have the Assistance of Counsel for his defense." Denying Dr. Burkhart's one and only motion for continuance to have the Assistance of Counsel for his defense, the trial court violated Dr. Burkhart's rights under the Constitution.

California Code of Civil Procedure Section 657 gives the grounds for a new trial due to irregularity in the proceedings of the court coupled with the error in law, excessive damages
accident or surprise, and insufficiency of evidence to justify the verdict. Pensions shall be divided up equally under California Family Code Section 2610. Community Debt shall be divided up equally. There are exceptions to California Family Code Section 2641. Dr. Burkhart requests under California Family Code Sections 2550 and 2555 that the community property be revised in all particulars on appeal in an effort to equally divide the community estate.

STATEMENT

Dr. Diana L. Quilici, D.D.S. sued Dr. Garrett R. Burkhart, D.D.S. for dissolution of marriage in July 1995 in the Superior Court of Sacramento County, California. At the pseudo-trial, the trial court started the trial prematurely despite Dr. Burkhart's first and only motion for a continuance. Moreover, the trial judge prejudicially erred and went beyond his

scope as a trial judge and the judge, himself , called Dr. Burkhart to the stand as an adverse witness to Dr. Burkhart's detriment. The Court of Appeals willfully overlooked the fact that the trial judge, himself, called Dr. Burkhart to the stand as an adverse witness. It is customary and usual during a trial if a witness is called to the stand, the attorney is the one who calls the witness to the stand. Furthermore, it is usual and customary that the attorney is the one who calls up an adverse witness to the stand and declares it so for the record. Not so in this case. Here, the trial judge failed his duty as a reasonable trial judge, and he alone called Dr. Burkhart to the stand as an adverse witness. Because the trial judge went beyond his scope, Dr. Burkhart sustained damages. This case bleeds of irregularities in the proceedings of the court and is the ultimate abuse of discretion by which Dr. Burkhart was prevented from having a fair trial and warrants a new trial by law. (See Deering's Ann. California Code Civ. Proc. Section 657.)

A. The Decision of the Court of Appeals Is Erroneous

The Court of Appeals wrote the word "ASSume" in their opinion several times because there are so many holes and unresolved issues in this case including why the trial court called for a "short break" so that Dr. Quilici could respond to checks she wrote to herself, forgery, and taking $12,000.00 out of the community pension against the court order. The trial court never reconvened after the "short break". Despite never learning Dr. Quilici's answers questions nor Dr. Quilici's Final Disclosure Statement with copies of her three most recent check stubs, the trial court via a miscarriage of justice made a judgment to the detriment of Dr. Burkhart. Erroneously, The Court of Appeals ASSumes those unresolved issues magically have been resolved. A trial judge just would not stop a trial. On the contrary, this is the same trial judge who started the trial before the discovery phase had been completed. Dr. Burkhart begs This Court to guide the lower courts to order a new trial instead of falling back on bad law and "ASSumptions". Please show us there is more to an appeal

process than just the Court of Appeals "Assuming" the trial judge did his duty when they can read the record themselves and the faulty judgment .

But for the holes in the case coupled with the prejudicial errors of the trial court, Dr. Burkhart would not be filing motions for reconsideration, relief of judgment, appeal to the Court of Appeals, appeal to The California Supreme Court, and petition for writ of certiorari. Despite the ASSumptions of The Court of Appeals, Dr. Burkhart is still waiting for the trial court to reconvene from its "short break".

B. The Trial Court Prejudicially Erred And Erred

This case should not have gone to trial when it did. Dr. Burkhart requested one and only continuance. The trial court even asked him to make the motion on the record and the reason for it. (Reporter's Transcripts 2) Dr. Burkhart made the motion and explained his reasons wanting the continuance to the trial court just like the trial court asked him to do:

> "Please take notice that respondent Garrett R. Burkhart moves the court under California Rules of Court 375(a) for an order continuing the trial. The grounds for issuance of this order are, number one, plaintiff has not answered questions to interrogatories including why she refused to allow respondent to be their son on Father's Day, and being accountable for $40,000 plus or minus, that she withdrew prior to filing divorce.
>
> "Number two, also due to the mediator's report is stale and obsolete, been out for eight months, never addressed, never adopted. Due to the best interest of the child, and the – his changing needs. Child is now calling me ca-ca (Ph.). I have a feeling of there is parental alienation going on, that I feel

that this report is now obsolete and needs to be updated.

"Respondent requests the court to order petitioner/respondent to mediation via Family Court Services with Dr. Ron Westerman in Auburn, California. Respondent requests joint physical and legal custody 50 percent of time with son and ordered to Granite Bay Learning Center for full-time card.

"Lastly, and due to petitioner's bitterness and relentless pursuit to financial crippling respondent, petitioner has escalated respondent's costs and attorney's fees and as a result, respondent does not have an attorney at this time and needs to – time to earn more money to hire an attorney to adequately represent himself.

"Because of all these issues, because this is way out of my field of expertise, and I had no clue that there's a settlement –pretrial settemen - - settlement paper that was supposed to be in, I feel I'm not ad - - adequately able to represent myself. So these issues and under California law, I'd like to respectfully ask for a continuance." (Reporter's Transcripts 2-4.)

Moreover, Dr. Quilici's pretrial statement was filed and served untimely, incorrect, and to the wrong address. (Reporter's Transcripts 17-18.)

Despite hearing all the substantial reasons for a continuance including the discovery phase was being held up by Dr. Quilici refusal to answer questions from interrogatories and that Dr. Burkhart's attorney depleted the retainer and was stuck without an attorney, the trial court erroneously denied Dr. Burkhart's one and only continuance. (Reporter's Transcripts 21.) The trial court willfully blindly rushed through the pseudo trial to Dr. Burkhart's detriment.

Along with starting this case prematurely, the trial court willfully prevented the direct testimony of Dr. Burkhart. The trial judge prejudicially erred by going beyond his scope as a reasonable trial judge and alone called Dr. Burkhart to the stand as an adverse witness to Dr. Burkhart's detriment. Let us be clear. The opposing party never intended to call Dr. Burkhart to the stand as an adverse witness. The opposing party never ever said the words "adverse witness". The opposing party never ever sited Evidence Code 776 for adverse witness. The trial judge did.! (Reporter's Transcripts 138.) However, once the trial court and the trial court alone called Dr. Burkhart an adverse witness, Dr. Burkhart ,unknowingly at the time, he was stripped of his right to speak freely and give direct testimony as Dr. Quilici did for some twenty pages of reporter's transcripts. It is ironic that Dr. Burkhart paid to have an electronic recordings of all the proceedings, yet the one piece that was most beneficial to his case, his own direct testimony, was taken away from him by the trial judge, himself.

If not yet sickened by the miscarriage of justice thus far, on a date the trial court wrote continue trial, the trial judge kicked the electronic reporter out of the courtroom, later self declaring it a settlement conference. "We don't do electronic reporting at settlement conference," said the trial court when confronted with Dr. Burkhart's objection. (Reporter's Transcripts 237)

During the opinion of the Court of Appeals, they chose to ASSume and even use the word "ASSume" over and over to cover up for the trial court's prejudicial errors. And when a big issue comes down the pike like the fact that "joint Physical and Joint Legal" Custody is omitted from the order and siting the Burgess Case showing the severity for omitting it, the Court of Appeals does not even address the Burgess Case and omits discussing that landmark case, but Dr. Burkhart did. (Marriage of Burgess (1996) 13 Cal, 4th 25, 27, 37.

California Licensed Attorney Jerry Guthrie formally declared, "In chambers, the trial court stated joint physical and joint legal custody of Garrett Burkhart Jr. but not in open

court and therefore is not in the record." (Clerk's Transcripts 918-920.) The trial court had opportunities to set the record straight for closure in Dr. Burkhart's Motion for Reconsideration and Relief of Judgment. However, the trial court denied all motions. The trial court threatened Dr. Burkhart that if he file one more motion, he would be "sanctioned severely". Do you think the Court of Appeals or the California Supreme Court would send the case back down to the trial court or modify the judgment to have closure for the benefit of the child? You guessed it. No, they are lame. For Christmas, Dr. Burkhart is buying them all spines.

REASONS FOR GRANTING THE PETITION

Denying this petition and the cries of a single father and his son would be like putting snow over manure. Sure the easy way would be the path already taken by the courts below:
>"Motion For Reconsideration is Denied!"
>"Motion For Relief Of Judgment is Denied!"
>"Request For Factual Determinations On Appeal And Take Additional Evidence Is Denied!"
>"Request For Rehearing Is Denied!"
>"Request For Publication Is Denied Because The Opinion Does Not Meet The Standards For Publication As Defined By Rule 976 of The California Rules of Court."
>"Request For Appeal Is Denied!"

I. There Needs To Be Closure of Custody and Equity

The best reason of all for granting this appeal is for the benefit of the child, Garrett Jr. There is no closure in custody. This needs to be repeated. There is no closure. Attorney Jerry Guthrie in a sworn declaration states: "the trial court said in chambers there should be shared legal and joint physical custody but did not say it in open court and therefore is not in the record." (Clerk's Transcripts 918-920.) Why is this so critical? In the landmark case of Burgess v. Burgess (In re

Marriage of Burgess (1996) 13 Cal. 4th 25,27, 37) because the judgment did not state joint physical and joint legal custody, the mother can relocate and bears no burden of demonstrating the move is necessary. (USA Today Newspaper April 22, 19996 front page and page 2A.)

In light of the Burgess Case, these words missing from the record in this case are critically important. In his motions after the pseudo trial, Dr. Burkhart attached Attorney Guthrie's sworn declaration of the missing words to give the court opportunities to fill the void in the judgment, only to be met with: " If you file any more papers like this, I am going to sanction you and sanction you severely." So this petition needs to be granted.

Let's get closure with the custody issue by spelling out the words "J-o-i-n-t P-h-y-s-i-c-a-l A-n-d J-o-i-n-t L-e-g-a-l C-u-s-t-o-d-y of Garrett Burkhart, Jr." Dr. Quilici takes the tax deduction the even years, while Dr. Burkhart takes the tax deduction the odd years also needs to be spelled out in the judgment. Isn't it ironic that the fetus Dr. Quilici wanted to abort and went as far as to set up the appointment in Sacramento in 1993 is the baby named Garrett Burkhart Jr. she now wants custody of. Dr. Burkhart would be willing to take a lie detector test or show the Court the papers and notarized declarations he has showing that Dr. Quilici intended to go ahead with an abortion when the parties were told of possible potential birth defects. Dr. Burkhart saved the baby Garrett Jr. and called Dr. Cathy Givins at The University of California at San Francisco (U.C.S.F.) set up an appointment to have a second opinion thereby saving the child. Even after the second opinion at U.C.S.F., Dr. Quilici still had her doubts and contemplated aborting Garrett Jr.

II. Dr. Burkhart Objects Being Deprived of Liberty, Property And A Fair Finished Trial

Let's finish the trial! The trial court ordered a "short break" so that Dr. Diana L. Quilici could look over the checks she wrote to herself so that she could respond along with the evidence that she illegally borrowed $16,000 from a pension

and forged Dr. Burkhart's name to buy stocks, but the trial never reconvened. Let's reconvene and resolve all issues for the benefit of all including Garrett Jr. Moreover, the decision of the lower courts are erroneous, and the issues that it addresses are important. The need for guidance from this Court is acute.

This case as it stands is unconstitutional. Dr. Quilici did not call Dr. Burkhart to the stand. The trial judge called Dr. Burkhart to the stand using the words, "adverse witness under Evidence Code 776." (Reporter's Transcripts 138.) When the trial judge took it upon himself to call up Dr. Burkhart as an adverse witness, the trial judge materially altered the trial to the detriment of Dr. Burkhart. Dr. Burkhart could not present his side of the case. As a result, Dr. Burkhart is stuck paying all the community debt, himself. Dr. Burkhart's right to the community FERS Pension of $12,3620. was never awarded to him, but all monies awarded to Dr. Quilici. This case needs to be sent back down to the lower court and have the current value of the pension appraised and divided. At the very least, Dr. Burkhart should be awarded $6,181. ($6,181 is half of the Community's FERS Pension.) The Court of Appeal neglectfully did not even address the fact that without notice, the trial judge, himself, and not the opposing party called Dr. Burkhart to the stand uttering the words adverse witness under Evidence Code 776. Abusing the legal system as a tool to harass Dr. Burkhart, the opposing party scheduled 13 depositions. And 13 times, Dr. Burkhart took off from work. And thirteen times the opposing party canceled the depositions often without any notice. Because Dr Burkhart's deposition never happened makes the trial court's barring Dr. Burkhart's direct testimony to speak freely all the more significant. The Court of Appeal needs this Courts guidance to show them how to address key issues, instead of neglectfully or willingly not even writing an opinion on the specific errors.

Let's do it now or send this case back down to the lower court and rightfully divide up the Community FERS pension of $ 12,362 and award Dr. Burkhart $6,181. After awarding Dr. Burkhart $6,181. from the community's FERS

Pension, let's get the increased updated value of the community FERS Pension and divide the additional monies between the two parties as well. "Insofar as settlement between spouses must be fair and equitable." (In re Roosevelt 9th Cir.BAP (Cal) 1994, 206-207.)

Look, one cannot build upon a structure that has no foundation. We need to start over with either a new trial or finish the old one. Because of Dr. Quilici's questionable character and failure to file and serve a final declaration of disclosure and answers to interrogatories, the Internal revenue Service needs to be subpoenaed to obtain Dr. Quilici's income and deductions. Just like God sent Jesus down to guide us, so too, this Court must send this case down and guide the lower courts. Allow Dr. Burkhart to speak freely give direct testimony so that he can present his side of the case. Do not allow the willfully blind lower courts to destroy the lives of a father and son. Do it even for Dr. Quilici. November 2, 1999 in Folsom, California Dr. Quilici accosted Dr. Burkhart and said, "I want your car." Then Dr. Quilici hysterically shouted, "You will be paying me a lot of money." So clearly Dr. Quilici is confused from the ambiguous judgment as well. These new facts from Dr. Quilici are not intended to be added into the record, but rather to show this Court the need to finish the trial or start a new trial with a good foundation clearing up all the confusion.

If Dr. Quilici thinks she is entitled to my car and thinks she is entitled to yet more money from me, I invite her to join with me in the appeal process to send this case back to the trial court and finish the trial and clear up all the issues. But no. Dr. Quilici would rather fight Dr. Burkhart every step of the way. Dr. Quilici fights Dr. Burkhart's motions for reconsideration and relief of judgment. In her taped oral argument to the Court of Appeals instead of asking the court to sent the case back down to the trial court to clear up the custody issue or money issues, Dr. Quilici said clear she did not want anymore to do with the court or Dr. Burkhart. With tears Christmas treeing down the wrinkles of her pale face, Dr. Quilici elected

to speak out against the toll this case has taken on her. Dr. Burkhart urges this Court to listen to the tape of the oral argument before the Court of Appeal. Well let's order a new trial so that issues can be resolved for Dr. Burkhart, thereby making Dr. Quilici happy, or at least in less of a fit so that she can move on to the next crisis in her life.

Round two. Instead of just a few pages that Dr. Burkhart wanted designated from the record, Dr. Quilici wanted the whole record designated. So you know who had to pay for the whole record to be designated. Right again, the same person who got stuck with the community debt and the same person who alone paid for the actuary even when the court said the fees were to be divided. Isn't it ironic that Dr. Burkhart alone gets stuck paying the bill for the actuary but Dr. Quilici is awarded the full value of the community FERS Pension.

It is clear that Dr. Quilici's boss, Dr. Norman Trieger, at Montefiore Hospital in Bronx, New York was right when he said that Dr. Quilici is delusional, needs help and cannot cope. From her limited initial disclosure statements to her untimely pretrial statement which needs to be stricken from the record, Dr. Quilici goes from one polar extreme by declaring no student loans under penalty of perjury to the other polar extreme and asking for close to $100,000. for reimbursement for student loans. When she thought she would have to help pay back the student loans, Dr. Quilici purposely did not mention student loans to her attorney and denied any student loans or loans of any kind under penalty of perjury on her initial Assets and Debts Disclosure Statement. Subsequently only after Dr. Burkhart was truthful and declared student loans was this an issue. Then her attorney told her she could use the legal system and make a claim for student loans reimbursement. So when she thought she could deplete even more money, Dr. Quilici threw up her claim for student loans. Then Dr. Quilici wants more money from Dr. Burkhart by trying to coerce Dr. Burkhart to send her money monthly for a total of $7,500. to settle the reimbursement of student loans issue. Dr. Burkhart submits to this court that Dr. Quilici now has second

thoughts about her divorce proceeding and wants Dr. Burkhart back into her life anyway she can even if it means coercing him to send her mail regularly to his old house which Dr. Diana Quilici now somehow has title of. The parties rent to own agreement at 101 Hingham Square, Folsom, California with father-in-law Dr. Gilbert Quilici is evident. Dr. Gilbert Quilici paid $200,000 cash for the property at 101 Hingham Square, Folsom California. Dr. Burkhart and Dr. Diana Quilici immediately moved into the home and were the only ones living there. Dr. Gilbert Quilici agreed to sell the property in one year to avoid paying capital gains tax. In the mean time, Dr. Burkhart and Dr. Diana Quilici did send Dr. Gilbert Quilici Rent To Own Payments as Dr. Diana Quilici submitted the checks and banking registrar into evidence showing the payments to Gilbert Quilici (See Reporter's Transcripts.) Faithfully every month, Dr. Burkhart and Dr. Diana Quilici paid Dr. Gilbert Quilici mortgage payments. Dr. Burkhart and Dr. Diana Quilici even paid for improvements including landscaping and sprinkler units and wall coverings, which Dr. Gilbert Quilici refused to pay. Dr. Gilbert Quilici took Dr. Burkhart's and Dr. Diana Quilici's money and the improvements they made to the home but sold the home to just to his daughter, Dr. Diana Quilici for $175,000. Dr. Burkhart's name is not on the title of 101 Hingham Square, Folsom, California. Dr. Burkhart requests his name be added as an owner or be awarded $12,5000.

Dr. Burkhart requests the court award him half of the money Dr. Diana Quilici deceitfully depleted out of the community's savings accounts and Home Savings C.D.'s without permission or consent of Dr. Burkhart, leaving Dr. Burkhart worse than broke because he is stuck paying all the thousands of dollars of community credit card debt. This needs to be evaluated so that Dr. Quilici can share half of the credit card debt, giving credit to Dr. Burkhart for the monthly payments he has thus far.

After listening to the tape from the oral argument from the Court of Appeal, this Court will then have a duty to remand this case back down and have Dr. Quilici's visiting

time with Garrett Burkhart, Jr. be re-evaluated. We also need her current pay stubs of the last three months to re-calculate spoucal and child support payments to Dr. Burkhart. To help complete the trial and the case this needs to be entered into the record! You see Dr. Quilici never filed and served a final declaration of disclosure statement. Oops!!!! Attorney Guthrie objected to it in his post trial brief to no avail.

Please grant the petition so that Dr. Quilici can explain all those checks that she wrote to herself, why she borrowed and transferred $16,000. out of community pension. Let's go back to court and find out why she declared there were no student loans and only 2 pensions. Let's let her say it for the record that the reason she declared no student loans was because she was afraid she would have to help Dr. Burkhart pay off the student loans even after they were divorced. Let's have Dr. Quilici respond to the fact the actuary found an undisclosed by her third pension. Oops!! Dr. Burkhart requests the Court charge Dr. Quilici with forgery, perjury, misappropriation of funds, violating the restraining order, willful neglect of court orders. Dr. Burkhart further requests this Court order Dr. Quilici to pay Dr. Burkhart $13,000 which is half of the community debt now at 21% interest. Also, Dr. Burkhart requests this Court order Dr. Quilici to pay back to the community the $20,000.00 that she stole out of our joint bank accounts days before filing for divorce. Unbeknownst to Dr. Burkhart, Dr. Quilici closed an AT&T credit card on April Fool's Day.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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In proper
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